

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TROY BAYLOR,)	
)	
Petitioner)	
)	Civil Action
v.)	No. 2011-cv-01068
)	
MIRIROSA LAMAS,)	
THE ATTORNEY GENERAL OF THE)	
STATE OF PENNSYLVANIA, and)	
THE DISTRICT ATTORNEY OF THE)	
COUNTY OF PHILADELPHIA,)	

Respondents

O R D E R

Now, this 14th day of March, 2012, upon consideration
of the following documents:

1. Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, which petition was filed by petitioner pro se on February 14, 2011;¹
2. Brief of Appellant, filed by petitioner pro se on March 30, 2011;
3. Amended Brief for Appellant, filed by petitioner pro se April 11, 2011;
4. Response to the Petition for Writ of Habeas Corpus, which response was filed by respondents on April 13, 2011, together with Exhibits A-D;
5. Plaintiff[']s Response to Defendants['] Answer Dated April 13, 2011, which response was filed by petitioner pro se on April 28, 2011;

¹ As noted by Magistrate Judge Sitarski, Mr. Baylor's petition was filed on the docket in this matter on February 14, 2011. However, petitioner declared that he placed the petition in the prison mail system on February 11, 2011. Therefore, pursuant to the prison mailbox rule, I will treat the petition as having been filed as of February 11, 2011. Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998); Rule 3(d) of the Rules Governing Section 2254 Habeas Cases in the United States District Courts.

6. Report and Recommendation of United States Magistrate Judge Lynne A. Sitarski filed August 8, 2011;
7. Memorandum in Support of Habeas Corpus, Order for Immediate Release From Imprisonment and Judicial Review of Administrative Record, which memorandum was filed by petitioner pro se on September 30, 2011;

it appearing that no objections have been filed to the Report and Recommendation of Magistrate Judge Sitarski;² it further appearing after review of this matter that Magistrate Judge Sitarski's Report and Recommendation correctly determined the legal and factual issues presented in the petition for habeas corpus relief,

IT IS ORDERED that Magistrate Judge Sitarski's Report and Recommendation is approved and adopted.

IT IS FURTHER ORDERED that the petition for habeas corpus relief is dismissed without prejudice for petitioner to file an appropriate application for writ of habeas corpus in accordance with 28 U.S.C. § 2254.

² Petitioner received a Notice accompanying the Report and Recommendation stating that petitioner was required to file any objections to the Report and Recommendation within fourteen days of service of the Notice and filing of the Report and Recommendation pursuant to Rule 72.1(IV)(b) of the Local Rules of Civil Procedure for the United States District Court for the Eastern District of Pennsylvania. The Notice was served and the Report and Recommendation was filed on August 2, 2011. Thus, any objections were required to be filed on or before August 16, 2011.

In addition to being untimely pursuant to Rule 72.1(IV)(b) of the Local Civil Rules, the memorandum filed by petitioner pro se on September 30, 2011 does not mention, object to, or otherwise discuss Magistrate Judge Sitarski's Report and Recommendation. Thus, I conclude that no objections were filed.

IT IS FURTHER ORDERED that because petitioner has not met statutory requirements to have his case heard, and no reasonable jurist could find this ruling debatable, a certificate of appealability is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this matter closed for statistical purposes.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge